

Message

From: Malave, Maria [Malave.Maria@epa.gov]
Sent: 10/11/2018 1:59:18 PM
To: Duffy, Rick [Duffy.Rick@epa.gov]
CC: Lischinsky, Robert [Lischinsky.Robert@epa.gov]; Segall, Martha [Segall.Martha@epa.gov]
Subject: ADs taken out and reasons of the Federal Register Notice for the ADI update

Rick,

Thanks for reviewing the FRN. I will route to Martha.

As discussed we took out several ADs from the FRN for the ADI update, so these ADs are not addressed in the one pager. We will keep them in the internal AIS system with the reasons we have not posted them at this time. Let me know if you have any further questions.

- Based on the review of the FRN by the Air Branch staff and regional program offices (email the FRN 7-31 clean version to regions), and further consultation with OAQPS and OGC as needed, we removed the following ADs from the ADI update and related FRN due to the reason(s) noted. [*OGC comments are in red and my responses to OGC are in blue*]
- Region 3 AD M170018- After consulting with the region and OGC, we agree to remove this AD because it is based on the Once In Always In (OIAI) policy, which has been since then changed per the January 2018 Bill Wehrum memorandum. There is a guidance document being prepared to address whether and how regions should discuss the 2018 Wehrum memo in upcoming ADs. [Per Sonja's email, OK with removing this one]
- Region 5 AD FP00001- After consulting with the region and OGC, we agreed to remove this AMP approval because it is a monitoring plan being proposed in the CISWI Federal Plan, which has not been finalized. [I defer to the OGC attorney with whom you consulted. Per Sara's and Marcia input on 6/8 to Maria- "After consulting with Marcia, OGC (Paul Versace) and R5, we think that FP00001 in the list of items to be sent to the FR for the ADI update should be removed. It concerns alternative monitoring, but is actually not an approval of an AMP because they were requesting something that was already proposed in the CISWI Federal Plan, which has not been finalized. Everyone involved has agreed that we don't want such a document out on the ADI. Let me know if have questions or need anything else"]
- Region 5 AD FP00002- After consulting the region and OAQPS, we agreed to remove this AD approving alternative monitoring parameters under the Part 62 Federal Plan provisions. The response does not contain sufficient detail about the source to correspond to the rule requirements necessary for this type of AD. Additionally, I believed the averaging periods which were proposed and approved in this AD should correspond to the duration of the performance test by pollutant; hence a 12-hour averaging period is too long and not appropriate. The Air Branch is having discussions with Region 5 to determine a course of action. [OK. Is there a plan to issue a revised AD after discussion? I made revisions in blue per Katie Owen input. She and Marcia spoke to the staff person and had an initial call with his manager, but they want more time to review it.]
- Region 5 FP00006- After consulting the region and OAQPS, we agreed to remove this AD for approval of a reduced frequency of performance testing and alternative monitoring method for sewage sludge incineration (SSI) units issued under the Part 62 Federal Plan provisions. The information included in the respond is not sufficient since it does not address previous performance tests data to justify approval of a reduce test schedule of every other year. Additionally, OECA was not consulted in the request for a scenario that is not in the SSI Federal Plan. The Air Branch is having discussions with Region 5 to determine a course of action. [OK. Plan to issue a revised AD after discussion? I made revisions in blue per Katie Owen input. She and Marcia spoke to the staff person and had an initial call with his manager, but they want more time to review it.]
- Region 6 AD 1700043- After consulting the region, we have agreed to remove this AD document at this time. This AD document is a supporting document being referenced as part of an ongoing AMP being reviewed by the region, which has not yet been finalized. [OK]

Maria

From: Malave, Maria

Sent: Thursday, September 13, 2018 2:48 PM

To: Lischinsky, Robert <Lischinsky.Robert@epa.gov>

Cc: Segall, Martha <Segall.Martha@epa.gov>; Duffy, Rick <Duffy.Rick@epa.gov>

Subject: RE: Need Regional input on Applicability Determinations to be announced in an upcoming Federal Register Notice for the ADI update

Rob,

Yes. I got responses from all regions with ADs (i.e., Regions 3, 5, 6, and 8) in the FRN. So, we do not need to further asked the AEMs for input on the FRN.

FYI. OGC (Elliot and Amy) has raised the question as to whether they need to continue reviewing the FRN abstracts at this time.

- They indicated that Amy does not have the expertise that the regions have and should be the ones reviewing and approving the FRN abstracts.
- I note that if the AD is wrong, the abstract will be wrong, but if it is due to technical reasons OGC (Amy) won't necessarily identify that is the case. This type of review for AD accuracy is done by the AB staff and in consultation many times with the regions and relevant OGC attorney (Amy included).
- I also note that the new QA/QC step of seeking regional AEM and staff review of the FRN AD abstracts has increased the likelihood of identifying problematic ADs before posting them on ADI. In light of this new step and the AB review step, I see OGC role being a potential consultee on specific issues (e.g., I consulted Amy on an AD was on the OIAI policy that was recently change) during the FRN review.
- In the past, Ed had indicated that he would evaluate whether there was a need for OGC to continue the review of the FRN after the LEAN project solutions were in place and were working such that issues with the AD process were being addressed. However, this discussions happen before we had this new QA/QC step.
- Obviously, there are issues with regions issuing incorrect ADs, as confirmed by this ongoing review of the FRN. We have removed five ADs from the FRN version that was send to the regions based on the Air Branch staff review, coordination with regions and further consultation with OAQPS and OGC on specific ADs.

I will provide you more details to discuss the ongoing FRN review and this OGC recommendation in more detail.

Maria

From: Lischinsky, Robert

Sent: Thursday, September 13, 2018 12:24 PM

To: Malave, Maria <Malave.Maria@epa.gov>

Cc: Segall, Martha <Segall.Martha@epa.gov>; Duffy, Rick <Duffy.Rick@epa.gov>

Subject: RE: Need Regional input on Applicability Determinations to be announced in an upcoming Federal Register Notice for the ADI update

Maria,

Did you receive any feedback from the regions? I raised this request on the AEM call this morning. No one brought any issues to my attention while on the phone but I asked them to respond to you asap if anything came to mind after the call.

Thanks.

Rob

From: Malave, Maria

Sent: Tuesday, August 07, 2018 10:44 AM

To: Adamiec, James <Adamiec.James@epa.gov>; Ayres, Sara <Ayres.Sara@epa.gov>; Basinger, David <Basinger.David@epa.gov>; Bellairs, Katharina <bellairs.katharina@epa.gov>; Bertram, Gary <Bertram.Gary@epa.gov>; Cardile, Joseph <Cardile.Joseph@epa.gov>; Cox, John <cox.john@epa.gov>; Eisele, Adam <Eisele.Adam@epa.gov>; Fortescue, Darren <Fortescue.Darren@epa.gov>; Goff, Keith <Goff.Keith@epa.gov>; Hall, Charles <hall.charles@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Harrison, Gina <harrison.gina@epa.gov>; Kaleri, Cynthia <kaleri.cynthia@epa.gov>; Kinard, Sherrie <Kinard.Sherrie@epa.gov>; Lancey, Susan <lancey.susan@epa.gov>; Lundelius, Diana <Lundelius.Diana@epa.gov>; Malone, Erin <Malone.Erin@epa.gov>; McNeal, Dave <Mcneal.Dave@epa.gov>; Mia, Marcia <Mia.Marcia@epa.gov>; Narvaez, Madonna <Narvaez.Madonna@epa.gov>; Nfodzo, Prince <Nfodzo.Prince@epa.gov>; North, Alexis <North.Alexis@epa.gov>; Ostrand, Laurie <Ostrand.Laurie@epa.gov>; Owens, Katharine <Owens.Katharine@epa.gov>; Page, Lee <Page.Lee@epa.gov>; Patefield, Scott <Patefield.Scott@epa.gov>; Rapp, Steve <Rapp.Steve@epa.gov>; Sanchez, Rafael <Sanchez.Rafael@epa.gov>; Sansevero, Christine <Sansevero.Christine@epa.gov>; Topinka, Natalie <topinka.natalie@epa.gov>; Vazquez, Natalia <Vazquez.Natalia@epa.gov>; Velez, Julian <velez.julian@epa.gov>; Wagner, Anna <wagner.anna@epa.gov>; Werner, Leslye <Werner.Leslye@epa.gov>; Whitmore, Scott <Whitmore.Scott@epa.gov>; Willard, Erin <Willard.ErinM@epa.gov>; Wilwerding, Joseph <Wilwerding.Joseph@epa.gov>; Yellin, Patrick <Yellin.Patrick@epa.gov>; Stovern, Michael <Stovern.Michael@epa.gov>; Hullinger, Luke <Hullinger.Luke@epa.gov>; McFadden, Kelly <McFadden.Kelly@epa.gov>; Frank, Nathan <frank.nathan@epa.gov>; Galinsky, Virginia <Galinsky.Virginia@epa.gov>; Cullen, Raymond <cullen.raymond@epa.gov>; Frey, Sarah <frey.sarah@epa.gov>; Connolly, Scott <Connolly.Scott@epa.gov>; Magyar, Raymond <Magyar.Raymond@epa.gov>; hagedorn, james <hagedorn.james@epa.gov>; Vazquez, Natalia <Vazquez.Natalia@epa.gov>; Bird, Patrick <Bird.Patrick@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>; McNeal, Dave <Mcneal.Dave@epa.gov>

Cc: Rapp, Steve <Rapp.Steve@epa.gov>; Buettner, Robert <Buettner.Robert@epa.gov>; Maldonado, Zelma <Maldonado.Zelma@epa.gov>; Spagg, Beverly <Spagg.Beverly@epa.gov>; Breneman, Sara <breneman.sara@epa.gov>; Thompson, Steve <thompson.steve@epa.gov>; Patefield, Scott <Patefield.Scott@epa.gov>; Salazar, Matt <Salazar.Matt@epa.gov>; McClintock, Katie <McClintock.Katie@epa.gov>; Smith, Mark A. <Smith.Marka@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; Branning, Amy <Branning.Amy@epa.gov>; Segall, Martha <Segall.Martha@epa.gov>; Duffy, Rick <Duffy.Rick@epa.gov>

Subject: Need Regional input on Applicability Determinations to be announced in an upcoming Federal Register Notice for the ADI update

All,

The Office of Compliance (OC) will be publishing a next Federal Register Notice (FRN) announcing recently issued Agency applicability determinations, alternative monitoring decisions and regulatory interpretations ("AD documents"). We appreciate your assistance in helping us to collect these AD documents and in providing the brief abstracts via the Applicability Determination Index (ADI) data system intranet interface (AIS).

Prior to the FRN publication, senior management in our office would like to be aware of any AD documents included in the attached FRN that may have a likelihood of being challenged on its substance or may be viewed as controversial by the regulated community or the public.

Please review the attached FRN document by Thursday, August 21, and let me know if any of the responses/abstracts that you submitted may pose such concerns and should be brought to management attention prior to publication.

If additional review time is needed or if you have any questions, please feel free to contact me.

Regards.

Maria Malave
US EPA Headquarters

ED_002674A_00010041-00003

Air Branch, MAMPD
Office of Compliance
T & T Phone No: 202-564-7027
M, W & F Phone No: 301-498-6102